

# **EXHIBIT B**

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6 Attorneys for Defendants C. R. Bard, Inc. and  
7 Bard Peripheral Vascular, Inc.

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9  
10 UNITED STATES DISTRICT COURT  
11  
12 NORTHERN DISTRICT OF CALIFORNIA  
13  
14 SAN FRANCISCO DIVISION

15 WAYNE RUDEN,  
16 Plaintiff,

17 vs.

18 C. R. BARD, INC., a New Jersey corporation,  
19 BARD PERIPHERAL VASCULAR, INC. (a  
subsidiary and/or division of defendant C. R.  
BARD, INC.) an Arizona corporation,  
20 CALIFORNIA PACIFIC MEDICAL CENTER,  
and DOES 1-100 INCLUSIVE,

21 Defendants.

22 Case No.:

23 [Removal from Superior Court of California,  
Count of San Francisco, Case No. CGC-15-  
548341]

24 **DEFENDANTS C. R. BARD, INC. AND  
BARD PERIPHERAL VASCULAR, INC.'S  
NOTICE OF REMOVAL OF ACTION  
UNDER 28 U.S.C. § 1441(B)**

25 [Filed Concurrently With Civil Cover Sheet,  
Corporate Disclosure Statement, Notice of  
Pendency of Other Actions or Proceedings,  
Certification of Interested Entities or Persons,  
and Jury Trial Demand]

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REED SMITH LLP  
A limited liability partnership formed in the State of Delaware

1           **TO THE CLERK OF THE UNITED STATES DISTRICT COURT FOR THE**  
 2 **NORTHERN DISTRICT OF CALIFORNIA:**

3           **PLEASE TAKE NOTICE THAT** Defendants C. R. Bard, Inc. and Bard Peripheral  
 4 Vascular, Inc. (collectively “Bard” or “Defendants”) hereby remove this action from the Superior  
 5 Court of the State of California, County of San Francisco, to the United States District Court for the  
 6 Northern District of California. Removal is based on 28 U.S.C. §§ 1332, 1441, and 1446.

7           In support of this Notice of Removal, Bard states as follows:

8           **I. PROCEDURAL BACKGROUND AND RELEVANT FACTS**

9           **A. Multidistrict Litigation Proceedings**

10          1.       Product liability cases alleging personal injuries from Bard’s line of inferior vena  
 11 cava (“IVC”) filters, which are prescription medical devices designed to prevent potentially fatal  
 12 blood clots from migrating from patients’ hips and legs to their lungs, have been filed in numerous  
 13 federal courts around the country.

14          2.       On August 17, 2015, the Judicial Panel on Multidistrict Litigation established MDL  
 15 No. 2641, *In re: Bard IVC Filters Products Liability Litigation*, in the District of Arizona to  
 16 coordinate all federal products liability litigation involving Bard’s line of IVC filters. *See Transfer*  
 17 *Order*, Aug. 17, 2015, attached as Exhibit “A.” One of the Bard IVC filters that is at issue in MDL  
 18 No. 2641 is the Bard Recovery® Filter, which is the device allegedly at issue in this action.

19          3.       Bard will identify this action, which involves product liability claims related to a Bard  
 20 Recovery® IVC Filter, as a potential “tag-along” to the MDL proceeding.

21           **B. Plaintiff Wayne Ruden’s State Court Action**

22          4.       On or about October 7, 2015, Plaintiff Wayne Ruden (“Plaintiff”) commenced this  
 23 action in the Superior Court of the State of California for the County San Francisco, entitled *Wayne*  
 24 *Ruden v. C. R. Bard, Inc., et al.*, Case No. CGC-15-548341. Pursuant to 28 U.S.C. § 1446(a), Bard  
 25 has attached copies of the state court docket, including all process, pleadings, and orders served on it  
 26 in the above-referenced action as Exhibit “B” to this Notice of Removal.

27          5.       On October 13, 2015, C. R. Bard, Inc.’s agent for service of process received via  
 28 uncertified mail a copy of Plaintiff’s Complaint accompanied by a notice and acknowledgement of

1 receipt. C. R. Bard, Inc. timely executed and returned the Notice and Acknowledgement of Receipt  
 2 on October 28, 2015. Bard Peripheral Vascular, Inc. has not yet been served with the Complaint.

3       6. No further proceedings have been had in the state court action.

4       7. Plaintiff alleges that in or around March 2004, he was implanted with a Bard  
 5 Recovery® Filter. *See Ex. B, Compl. ¶ 31.* Plaintiff asserts claims against Bard for negligence,  
 6 strict product liability (failure to warn, design defect, and manufacturing defect), breach of implied  
 7 warranty of merchantability, negligent misrepresentation, and negligent failure to recall/retrofit;  
 8 Plaintiff is also seeking punitive damages. *Id.* at ¶¶ 43-53, ¶¶ 63-118, and ¶¶ 127-143.

9       8. Plaintiff also asserts claims against Defendant California Pacific Medical Center  
 10 (“CPMC”) for medical negligence and breach of fiduciary duty. *Id.* at ¶¶ 54-62 and ¶¶ 119-126.  
 11 Notably, Plaintiff’s claims against CPMC arise not from CPMC’s care or treatment of Plaintiff when  
 12 Plaintiff allegedly received his Bard Recovery® Filter in or around 2004, but from CPMC’s alleged  
 13 inaction in failing to inform Plaintiff about a publically available FDA Public Health Notification  
 14 (“FDA PHN”) directed to physicians and health care providers on August 9, 2010, more than six  
 15 years after CPMC’s treatment of Plaintiff.

16       9. This case is removable under 28 U.S.C. § 1441(b) because no defendant who is  
 17 “properly joined and served” is a citizen of the State of California.

18       10. To the best of Bard’s knowledge, Defendant CPMC has not yet been served with a  
 19 copy of the Summons and the Complaint. The consent of unserved defendants is not required for  
 20 successful removal. *See, e.g.,* 28 U.S.C. § 1441(b); *see also Salveson v. Western States Bankcard*  
*Ass’n.*, 731 F.2d 1423, 1429 (9th Cir.1984) (noting that “a party not served need not be joined” in a  
 21 petition for removal); *Roberts v. Palmer*, 354 F. Supp. 2d 1041, 1044 (E.D. Mo. 2005) (“It is well  
 22 recognized that the consent of unserved defendants need not be obtained to effectuate removal.”).

24       11. Even if CPMC has been served, CPMC’s consent to remove is not necessary because  
 25 CPMC is fraudulently misjoined in this action. *See, e.g., Sutton v. Davol, Inc.*, 251 F.R.D. 500, 505-  
 26 06 (E.D. Cal. 2008) (consent of fraudulently misjoined party not required for removal); *see also*  
 27 *United Computer Systems, Inc. v. AT & T Corp.*, 298 F.3d 756, 762 (9th Cir. 2002) (fraudulently  
 28 joined defendant need not join in removal petition).

1       **II. BARD HAS MET THE PROCEDURAL REQUIREMENTS FOR REMOVAL**

2       12. Pursuant to 28 U.S.C. § 1446(d), a copy of this Notice of Removal is being served on  
 3 Plaintiff, and a copy is being filed with the Clerk of the Court for the Superior Court of the State of  
 4 California for the County of San Francisco.

5       13. This Notice of Removal is properly filed in the Northern District of California  
 6 pursuant to 28 U.S.C. § 1446(a).

7       14. The United States District Court for the Northern District of California, San  
 8 Francisco Division, is the proper district to where this matter should be assigned because it is the  
 9 District Court embracing the Superior Court of California, County of San Francisco, where  
 10 Plaintiff's state court action is pending. *See* 28 U.S.C. § 1441(a); 28 U.S.C. § 84(c)(1).

11       15. C. R. Bard, Inc. received a copy of the Complaint on October 13, 2015. This Notice  
 12 of Removal is being filed within 30 days of that date; therefore, the Notice is timely pursuant to 28  
 13 U.S.C. § 1446 (b).

14       16. No previous application has been made for the relief requested herein.

15       17. As discussed at length below, Defendant CPMC is fraudulently misjoined in this  
 16 action, and, thus, CPMC's consent to removal is not required. *See, e.g., Sutton*, 251 F.R.D. at 505-  
 17 506; *see also United Computer Systems, Inc.*, 298 F.3d at 762 (fraudulently joined defendant need  
 18 not join in removal petition).

19       18. No party in interest properly joined and served as a defendant is a citizen of the State  
 20 in which this action was brought, California. *See* 28 U.S.C. §1441(b). The Complaint purports to  
 21 name CPMC, upon information and belief, a California citizen; however, because CPMC is  
 22 fraudulently misjoined in this lawsuit, its California citizenship is not a barrier to removal  
 23 jurisdiction. *See* 28 U.S.C. § 1441(c); *see also United Computer Sys. Inc.*, 298 F.3d at 762.

24       **III. REMOVAL IS PROPER BECAUSE THIS COURT HAS SUBJECT MATTER  
 25 JURISDICTION PURSUANT TO 28 U.S.C. §§ 1332 AND 1441**

26       19. This Court has subject matter jurisdiction pursuant to 28 U.S.C. §1332 because this is  
 27 a civil action in which the amount in controversy exceeds the sum of \$75,000, exclusive of costs and  
 28 interest, where the properly joined parties are citizens of different states.

1           **A. The Amount in Controversy Requirement Is Satisfied**

2       20. Bard filed this Notice of Removal in good faith and on a reasonable basis in law and  
 3 in fact that the requisite amount in controversy is being sought in this action. When the amount in  
 4 controversy is not specified in the complaint, the court may consider the facts alleged in the  
 5 complaint as well as in the notice of removal. *See Singer v. State Farm Mut. Auto Ins. Co.*, 116 F.3d  
 6 373, 376 (9th Cir. 1997); *Simmons v. PCR Tech.*, 209 F. Supp. 2d 1029, 1031 (N.D. Cal. 2002).

7       21. To determine the amount in controversy, a district court takes into account claims for  
 8 general damages, pain and suffering, out-of-pocket loss, emotional distress, and punitive damages.  
 9 *Richmond v. Allstate Ins. Co.*, 897 F. Supp. 447, 449-50 (S.D. Cal. 1995). Additionally, the “amount  
 10 in controversy is not measured by the low end of an open-ended claim, but rather by a reasonable  
 11 reading of the value of the rights being litigated.” *Kenneth Rothschild Trust v. Morgan Stanley Dean*  
 12 *Witter*, 199 F. Supp. 2d 993, 1001 (C.D. Cal. 2002) (quoting *Angus v. Shiley Inc.*, 989 F.2d 142, 146  
 13 (3d Cir. 1993)).

14       22. Plaintiff alleges that he has “incurred significant medical expenses and has endured  
 15 extreme pain and suffering, fear of death, loss of enjoyment of life, and other losses, some of which  
 16 are permanent in nature.” Ex. B, Compl. ¶ 31. Plaintiff further alleges that as a result of the failure  
 17 of his Bard Recovery® Filter, he “lives in constant fear that the [Bard Recovery® Filter] will  
 18 continue to migrate, pierce his heart, and kill him.” *Id.* He also alleges that he “has become  
 19 impaired and his ability to earn wages has been diminished, and will remain so in the future . . .  
 20 [and] is required to attend regular physicians’ visits and to undergo imaging studies.” *Id.* Finally, he  
 21 alleges that he “has suffered permanent and continuing injury, loss of enjoyment of life, pain,  
 22 suffering, and impairment. Plaintiff has suffered emotional trauma, harm, and injuries. Plaintiff’s  
 23 ability to carry on the affairs of his daily life has been impacted and diminished, and will continue to  
 24 diminish in the future.” *Id.* at ¶ 32. As result of his alleged injuries, Plaintiff seeks past and future  
 25 general damages; past and future economic and special damages; loss of earnings and impaired  
 26 earning capacity; past and future medical expenses; past and future mental and emotional distress;  
 27 punitive damages; costs of suit incurred herein; pre-judgment interest; loss of consortium damages;  
 28 and such other and further relief as the Court may deem just and proper. *See id.* at Prayer for

1 Damages ¶¶ a-d. Plaintiff's punitive damages claim is included when determining the amount in  
 2 controversy. *Gibson v. Chrysler Corp.*, 261 F.3d 927, 945 (9th Cir. 2001) ("It is well established  
 3 that punitive damages are part of the amount in controversy in a civil action."); *see also Bell v.*  
 4 *Preferred Life Assurance Society*, 320 U.S. 238, 240 (1943).

5       23. It is thus facially apparent from the Complaint that Plaintiff claims in excess of  
 6 \$75,000.00. *See Luckett v. Delta Airlines, Inc.*, 171 F.3d 295, 298 (5th Cir. 1999) (amount in  
 7 controversy requirement met where plaintiff alleged "damages for property, travel expenses, an  
 8 emergency ambulance trip, a six day stay in the hospital, pain and suffering, humiliation, and her  
 9 temporary inability to do housework after the hospitalization" as a result of heart failure allegedly  
 10 caused by the defendant); *Evans v. CDX Servs., LLC*, 528 F. Supp. 2d 599, 606 (S.D. W. Va. 2007)  
 11 (denying remand where plaintiffs alleged injury but did not specify damages; "When the Court  
 12 'considers the additional elements of pain and suffering and future damages, one can easily conclude  
 13 the amount in controversy is satisfied.'"); *In re Rezulin Prods. Liab. Litig.*, 133 F. Supp. 2d 272, 296  
 14 (S.D.N.Y. 2001) (concluding that complaint "obviously asserts a claim exceeding \$75,000" where  
 15 plaintiff sought "compensatory and punitive damages" for alleged serious medical conditions and  
 16 economic losses due to use of a prescription medication).

17           **B. There is Complete Diversity of Citizenship Between the Plaintiff and the Properly  
 18           Joined Defendants**

19       24. There is complete diversity between Plaintiffs and the properly joined defendants.

20       25. Plaintiff is a resident and citizen of the State of California. *See Ex. B, Compl.* ¶ 3.

21       26. Defendant C. R. Bard, Inc. is a New Jersey corporation with its principal place of  
 22 business in the State of New Jersey. Therefore, C. R. Bard, Inc. is a citizen of New Jersey. *See* 28  
 23 U.S.C. § 1332(c).

24       27. Defendant Bard Peripheral Vascular, Inc. is an Arizona corporation with its principal  
 25 place of business in the State of Arizona. Therefore, Bard Peripheral Vascular, Inc. is a citizen of  
 26 Arizona. *Id.*

27       28. Upon information and belief, none of the DOE defendants has been substituted with  
 28 any named defendants or been served with process in the state court action. For purposes of

1 removal, “the citizenship of defendants sued under fictitious names shall be disregarded.” 28 U.S.C.  
 2 § 1441(b)(1); *accord Soliman v. Phillip Morris Inc.*, 311 F.3d 966, 971 (9th Cir. 2002); *McCabe v.*  
 3 *General Foods Corp.*, 811 F.2d 1336, 1339 (9th Cir. 1987). Therefore, the citizenship of DOES 1  
 4 through 100 should be disregarded for purposes of diversity.

5 **C. The California Defendant Is Fraudulently Misjoined, and CPMC’s Presence Will**  
 6 **Not Defeat Diversity**

7 29. Upon information and belief, Defendant CPMC, at the time the state court action was  
 8 commenced and at the time of this Notice, is a citizen of the State of California.

9 30. CPMC is fraudulently misjoined in this action, and, thus, CPMC’s presence will not  
 10 defeat diversity. *See Tapscott v. MS Dealer Serv. Corp.*, 77 F.3d 1353 (11th Cir. 1996) (holding  
 11 diversity of citizenship requirement was satisfied by reason of fraudulent misjoinder doctrine  
 12 because the alleged transactions involving the non-diverse defendants were wholly distinct from the  
 13 alleged transactions involving the diverse defendants), *abrogated on other grounds in Cohen v.*  
 14 *Office Depot, Inc.*, 204 F.3d 1069 (11th Cir. 2000); *Greene v. Wyeth*, 344 F. Supp. 2d 674, 684-85  
 15 (D. Nev. 2004) (“[T]his Court agrees with the Fifth and Eleventh Circuits that the [Tapscott] rule is a  
 16 logical extension of the established precedent that a plaintiff may not fraudulently join a defendant in  
 17 order to defeat diversity jurisdiction in federal court.”) (internal citations omitted); *see also Sutton*,  
 18 251 F.R.D. at 505 (applying the doctrine of fraudulent misjoinder and holding that the plaintiff’s  
 19 joinder of a non-diverse, medical malpractice defendant in a product liability case was “improper”).

20 31. The only claims against CPMC are for medical malpractice and breach of fiduciary  
 21 duty. *See Ex. B, Compl.* ¶¶ 54-62 and ¶¶ 119-126. Both claims are premised on CPMC’s alleged  
 22 failure to inform Plaintiff about a publically available FDA Public Health Notification (“FDA  
 23 PHN”) directed to physicians and health care providers on August 9, 2010. *See id.* at ¶¶ 61, 125.

24 32. Critically, Plaintiff’s claims against CPMC arise not from CPMC’s treatment and care  
 25 of Plaintiff when he allegedly received a Bard Recovery® Filter in or around March 2004, but from  
 26 CPMC’s alleged inaction that occurred more than six years after CPMC’s treatment and care of  
 27 Plaintiff. Thus, Plaintiff’s claims against CPMC will likely turn, at least in part, on whether

1 CPMC even owed a duty (either a duty of care or a fiduciary duty) to Plaintiff six years after CPMC  
 2 treated him.

3       33.     Federal courts have frequently applied the doctrine of fraudulent joinder to cases  
 4 involving claims for medical negligence and products liability. For instance, in *Sutton*, 251 F.R.D.  
 5 at 503-505, the plaintiff joined product liability claims against the manufacturer of a prescription  
 6 medical device with a medical negligence claim against his healthcare provider. Specifically, the  
 7 plaintiff alleged that his healthcare providers had failed to timely act in response to an FDA recall  
 8 notice, and that as a result, plaintiff was implanted with a recalled device. *Id.* at 502. The court  
 9 found “compelling” the defendants’ argument that the plaintiff’s product liability claims were so  
 10 factually distinct from the claims against plaintiff’s healthcare providers for failing to respond to a  
 11 recall warning as to constitute fraudulent joinder. *Id.* at 505. The defendant’s arguments were  
 12 particularly persuasive in light of the fact that the fraudulent joinder deprived the defendants’ of  
 13 their right to have the product liability claims transferred to multidistrict litigation, where they could  
 14 be handled in an efficient and consistent matter in a single forum in the MDL. *Id.* at 504. Thus, the  
 15 court severed the claims against the healthcare providers and remanded them to state court “so as to  
 16 preserve the removing Defendants’ right to removal in the remaining multidistrict action and to  
 17 preserve the interests of judicial expediency and justice so that all pre-trial discovery on the products  
 18 liability case can be coordinated in a single forum.” *Id.* at 505; *see also In re Guidant Corp.,*  
 19 *Implantable Defibrillators Prods. Liab. Litig.*, MDL No. 05-1708, Case No. 07-1129, 2007 WL  
 20 5377783, \*7 (D. Minn. Jun. 4, 2007) (severing and remanding only the claims against defendant  
 21 hospital because “the basis for the causes of action against [the hospital] do not arise from the same  
 22 transaction and occurrences as those in the causes of action against the [medical device  
 23 manufactures]; *Greene*, 344 F. Supp. 2d at 684-85 (remanding medical malpractice claims against  
 24 non-diverse doctor while retaining jurisdiction over product liability claims); *In re Rezulin Prod.*  
 25 *Liab. Litig.*, MDL No. 1348, 2003 WL 21276425, at \*1-2 (S.D.N.Y June 2, 2003) (finding claims  
 26 against non-diverse physician were misjoined with claims against drug manufacturer); *Stone v.*  
 27 *Zimmer, Inc.*, No. 09-08202-CIV, 2009 WL 1809990, at \*4 (S.D. Fla. June 25, 2009) (“The joinder  
 28 of the malpractice claim against [the doctor] and the [pain management center] with the product

1 liability claim against [the product manufacturer] is thus inappropriate because these claims do not  
 2 both involve common questions of law or fact and do not assert joint, several or alternative liability  
 3 arising out of the same transaction, occurrence or series of transactions or occurrences.”) (internal  
 4 quotation omitted).

5       34.     Like the plaintiff’s claims in *Sutton*, Plaintiff’s claims against CPMC do not arise out  
 6 of the same transaction or occurrence as the products liability claims brought against Bard. Instead,  
 7 the claims against CPMC are legally and factually distinct from the claims against Bard. The  
 8 products liability claims against Bard are based on the “development, testing, assembling,  
 9 manufacture, packaging, labeling, preparing, distribution, marketing, supplying, and/or selling” of  
 10 the Bard Recovery® Filter. Ex. B, Compl. ¶ 1. By contrast, the medical malpractice and breach of  
 11 fiduciary duty claims against CPMC are based on whether CPMC owed a duty to Plaintiff six years  
 12 after it provided its treatment and care for Plaintiff, and whether CPMC’s breached the duty of care  
 13 and/or its fiduciary duty to Plaintiff by allegedly failing to inform Plaintiff about a publically  
 14 available FDA Public Health Notification directed to physicians and health care providers on August  
 15 9, 2010. *See Burgess v. Superior Court*, 2 Cal. 4th 1064, 1077 (1992) (stating the elements of a  
 16 medical malpractice claim); *Jameson v. Desta*, 215 Cal. App. 4th 1144, 1164 (2013) (stating the  
 17 elements of a breach of fiduciary duty claim against a physician). The crucial aspects of the claims  
 18 against Bard, on the one hand, and against CPMC, on the other hand, are legally and factually  
 19 separate and distinct such that they do not arise from the same transaction or occurrence. *See Sutton*,  
 20 251 F.R.D. at 505 (“Plaintiffs’ claims based on strict products liability against the removing  
 21 Defendants are separate from Plaintiffs’ claims of medical malpractice against the California  
 22 Defendants in implanting a previously recalled patch in Plaintiff . . . [the] claims against the  
 23 California Defendant are not based on the allegedly negligent testing and manufacture of the Patch  
 24 and cannot be under California law.”).

25           **D. Alternatively, Plaintiff’s Claims Against CPMC Should Be Severed Pursuant to  
 26 Rule 21 Because it Is Not A Necessary and Indispensable Party**

27       35.     In the alternative, even if CPMC was not fraudulently misjoined, this Court should  
 28 sever and remand Plaintiff’s medical malpractice and breach of fiduciary duty claims against CPMC

1 pursuant to Federal Rule of Civil Procedure 21 because it is not a necessary and indispensable party.  
 2 Under Rule 21, courts may sever claims against non-diverse defendants and thereby perfect diversity  
 3 jurisdiction. *See Newman-Green, Inc. v. Alfonzo-Larrain*, 490 U.S. 826, 832 (1989) (“[I]t is well  
 4 settled that Rule 21 invests district courts with authority to allow a dispensable party to be dropped  
 5 at any time”).

6       36. Courts have previously used Rule 21 to perfect diversity jurisdiction, including in  
 7 product liability actions where an MDL has been formed against a pharmaceutical or medical device  
 8 company and the plaintiff joins medical malpractice claims against a non-diverse physician. Indeed,  
 9 that is precisely what the Eastern District of California did in *Sutton v. Davol, Inc.*,<sup>1</sup> where the  
 10 plaintiff attempted to join non-diverse California health care providers in a product liability action  
 11 against two medical device companies. *See Sutton*, 251 F.R.D. at 501. Finding that the interests of  
 12 judicial expediency and justice favored removal so that the case could be part of an MDL, the court  
 13 severed the medical malpractice claims against the non-diverse California defendants and remanded  
 14 those claims to state court. *See Sutton*, 251 F.R.D. at 505 (severing and remanding the plaintiff’s  
 15 claims against a non-diverse California defendant pursuant to Rule 21 “so as to preserve the  
 16 removing Defendants’ right to removal in the remaining multidistrict action and to preserve the  
 17 interests of judicial expediency and justice so that all pre-trial discovery on the products liability  
 18 case can be coordinated in a single forum”); *see also Greene*, 344 F. Supp. 2d at 683-84 (severing  
 19 and remanding claims because manufacturing and marketing of drug and alleged wrongdoing of  
 20 prescribing physician were dissimilar acts); *Sullivan v. Calvert Mem. Hosp.*, -- F. Supp. 3d --, 2015  
 21 WL 4614467, at \*3 (D. Md. July 30, 2015) (severing medical malpractice claims against non-diverse  
 22 doctors to retain jurisdiction over product liability claims against medical device manufacturer  
 23 before transfer to the MDL, noting that although the two sets of claims “may involve the same  
 24 physical object that is the source of the products liability claims against the Ethicon Defendants, the  
 25 medical negligence claims against the Maryland Healthcare Defendants involve legal standards and  
 26 factual inquiries distinctly different from the products liability claims”); *Mayfield v. London*  
 27 *Women’s Care, PLLC*, No. 15-19-DLB, 2015 WL 3440492, at \*4 (E.D. Ky. May 28, 2015) (same,

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28 <sup>1</sup> Davol, Inc. is a subsidiary of C. R. Bard, Inc.

1 noting that the medical malpractice claim “is highly distinct from the various claims brought . . . for  
 2 products liability”); *Akin v. Stryker Corp. et al.*, Case No. 13-cv-01811(DWF/FLN), 2013 WL  
 3 6511855, at \*3-5 (D. Minn. Dec. 12, 2013) (severing and remanding claims against non-diverse  
 4 medical provider defendants from claims against manufacturer defendants, even though the  
 5 misjoinder was not “egregious,” because a finding of bad faith is not required to find that non-  
 6 diverse defendants have been fraudulently misjoined); *Cooke-Bates v. Bayer Corp.*, No. 3:10-CV-  
 7 261, 2010 WL 3984830, at \*4-5 (E.D. Va. Oct. 8, 2010) (severing medical malpractice claims  
 8 against non-diverse doctors to retain jurisdiction over product liability claims against medical device  
 9 manufacturer before transfer to the MDL); *Joseph v. Baxter International, Inc.*, 614 F. Supp. 2d 868,  
 10 873 (N.D. Ohio 2009) (concluding that severance under Rule 21 was appropriate because “the  
 11 plaintiffs will benefit from the MDL process: they will not bear the burden of having to engage on  
 12 their own, and at their sole expense, in discovery vis-a-vis Baxter,” and “the inconvenience and  
 13 potential prejudice to Baxter if I remand substantially outweigh the inconvenience and possible  
 14 prejudice to the plaintiffs from remaining before me.”).

15       37. Likewise, here, CPMC is not an indispensable party. The claims against CPMC deal  
 16 with its alleged failure to provide appropriate information to Plaintiff six years after Plaintiff  
 17 received his Bard IVC filter, whereas Plaintiff’s product liability claims against Bard deal with  
 18 entirely different issues of the design, manufacture, and labeling the Recovery® Filter. Moreover,  
 19 transfer of Plaintiff’s claims against Bard to the Bard IVC Filter MDL will advance the convenience  
 20 and efficiency of the case, eliminate duplicative discovery, prevent inconsistent pre-trial rulings, and  
 21 conserve the resources of the judiciary, the parties, and their counsel. Accordingly, even if the Court  
 22 finds that CPMC is not fraudulently misjoined, the Court should sever and remand the claims against  
 23 CPMC to perfect diversity jurisdiction over Bard.

24       38. By removing this action to this Court, Bard does not waive any defenses, objections  
 25 or motions available to them under state or federal law.

26       39. Bard reserves the right to amend or supplement this Notice of Removal.

27       40. Bard requests a trial by jury on all issues so triable.

1 WHEREFORE, Bard prays that this action be removed from the Superior Court of the State  
2 of California for the County of San Francisco to the United States District Court for the Northern  
3 District of California.

4

5 DATED: November 12, 2015

6

REED SMITH LLP

7

8

By: /s/ Steven J. Boranian

9 Steven J. Boranian

10 Mark A. Sentenac

11 Attorneys for Defendants C. R. Bard, Inc. and  
12 Bard Peripheral Vascular, Inc.

13 REED SMITH LLP  
14 A limited liability partnership formed in the State of Delaware  
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